

NO. P-3007/NA-89-76 ESTABLISHING A COMMENT PERIOD

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of the
Minnesota Independent Equal
Access Corporation's
Application for a Certificate
of Public Convenience and
Necessity

ISSUE DATE: November 26, 1990

DOCKET NO. P-3007/NA-89-76

ORDER ESTABLISHING A COMMENT
PERIOD

PROCEDURAL HISTORY

On February 7, 1989, the Minnesota Independent Equal Access Corporation (MIEAC) filed an application for a certificate of authority to provide centralized equal access (CEA) services to interexchange carriers (IXCs) on behalf of any independent local exchange carrier (ILEC) which chose to use its services.

On June 2, 1989, the Commission issued its NOTICE AND ORDER FOR HEARING, referring MIEAC's application to the Office of Administrative Hearings for contested case proceedings.

On August 22, 1990, the Administrative Law Judge (ALJ) assigned to the MIEAC case issued his Findings of Fact, Conclusions of Law and Recommendations.

By September 15, 1990, the following parties had filed exceptions to the ALJ's Report: MIEAC, U S WEST Communications (USWC), the Minnesota Department of Public Service (the Department), the Office of the Attorney General - Residential Utilities Division (OAG-RUD), AT&T Communications of the Midwest, Inc. (AT&T), and MCI Telecommunications Corporation (MCI).

By September 24, 1990, the same parties and Teleconnect Long Distance Services and Systems Company (Teleconnect) filed replies to the exceptions.

On October 31 and November 1, 1990, the Commission heard oral argument from the parties and on November 2, 1990 met to consider this matter.

FINDINGS AND CONCLUSIONS

The ultimate decision that the Commission was required to make in this proceeding was what kind of certificate of authority, if any, it would grant to MIEAC to provide certain telecommunications services in Minnesota. The Commission has decided to grant MIEAC a certificate of authority which is subject to certain conditions. In a subsequent Order, the Commission will issue that certificate of authority and fully describe the conditions under which the Commission finds that MIEAC's proposed service is in the public interest.

The current Order does not focus on issues essential to the public interest determination which is involved in granting a certificate of authority. Instead it focuses on issues which have a practical bearing on the implementation phase of MIEAC's service plan. At issue here is whether certain kinds of participation by IXCs in MIEAC's equal access system will be voluntary or mandatory. In this matter, these issues have come to be referred to as the Participation Issues.

Background

Equal access service allows a customer to select (by presubscription) from among the interexchange carriers (IXCs) that are competing for the toll traffic from that customer's local exchange. MIEAC proposes to establish a system that will provide independent telephone companies (ILECs) with the ability to offer equal access services to their customers. ILECs that contract with MIEAC for equal access services "participate" in the MIEAC system and therefore are referred to as Participating ILECs or PILECs. Under MIEAC's equal access system, PILEC customers will select their choice of IXC (for interLATA toll service and intraLATA toll service) on ballots that are distributed to them by MIEAC before the MIEAC system goes into operation.

The Participation Issues: USWC and AT&T

The details and evaluation of MIEAC's plan for providing equal access service and promoting competition among IXCs for toll traffic from the PILECs need not be addressed in this Order. This Order focuses on two issues:

1. Appearance on the Ballot: Will the Commission require the dominant IXC that currently provides 1+ interLATA toll service to the PILECs (AT&T) and the dominant IXC that currently provides 1+ intraLATA toll service to the PILECs (USWC) to appear on the ballot made

available to PILEC customers or will the ballot appearance of these IXCs be voluntary?

2. Discontinuation of Service: Will the Commission permit the dominant IXCs (AT&T for interLATA toll service and USWC for intraLATA toll service) to discontinue toll service to the PILECs once the MIEAC system is in operation?

There was no need for the Commission to decide these issues in order to render a public interest judgment regarding MIEAC's application. The resolution of these issues will not affect the Commission's determination that the MIEAC proposal, as conditioned, serves the public interest. However, the Commission recognizes that as a practical matter, in order to facilitate implementation MIEAC's its equal access system (particularly the balloting element), the Commission must decide the first issue (whether it will require USWC and AT&T to appear on the ballot) before MIEAC proceeds with the balloting.

Regarding the second issue (whether the IXCs will be required to continue to serve the PILECs throughout MIEAC's operation), a Commission decision is not a prerequisite to the balloting process. However, this issue appears to involve legal and policy considerations so closely related to those which affect the balloting issue that the Commission will consider the two issues at the same time.

Consequently, the issues regarding AT&T and USWC's appearance on the ballot and their obligations, if any, to provide on-going provision of service in PILEC exchanges during MIEAC's operation will be examined thoroughly and determined expeditiously.

Comment Period

To assist in determining these issues, the Commission will establish a brief comment period leading to a better informed, appropriate and timely consideration of these issues.

In written comments regarding the two issues identified above, parties will address the following questions:

1. What is the appropriate procedure and time sequence for the Commission to follow in resolving these issues?
2. What are the obligations of AT&T and USWC under Minn. Stat. § 237.60, subd. 3 (1988)?
3. What are the legal obligations of other interexchange carriers (IXCs) under Minn. Stat. § 237.60, subd. 3 (1988)?

4. Are there legal bases for treating USWC and AT&T differently than other IXCs with respect to appearance on the equal access ballot and service to PILECs during the operation of MIEAC's equal access system?
5. Are there policy reasons for treating USWC and AT&T differently than other IXCs with respect to appearance on the equal access ballot and service to PILECs during the operation of MIEAC's equal access system?
6. Must the obligations of USWC or AT&T to serve as Carriers of Last Resort or Designated Carriers be determined in order to resolve these two issues?
7. At this time, does the record in this case provide the Commission with enough information to decide these issues?

The Commission will accept written comments from any party on these two issues and the seven related questions within 15 days. Thereafter, any party may file reply comments within 15 days.

ORDER

1. The parties to this proceeding shall file written comments responsive to the issues and questions listed in the text of this Order and serve a copy of their comments upon all other parties within 15 days of the date of this Order.
2. Any party may file reply comments within 30 days of the date of this Order.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

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